Keral Gazette No. 37 dated 20th September 1983.
PART A

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 37/EL1/83/Elec. *Dated, Trivandrum, 2nd July* 1983.

Election Commission's Notification No. 82/KL-LA/13/83 dated 2-6-19 is hereby published.

By order,
R. RAMACHANDRAN NAIR,
Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi, 110001.

Dated, 2nd June 1983

NOTIFICATION

No. /KL-LA/13/83—In pursuance of section 106 of the Representation of the people Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala dated 4th January, 1983 in Election Petition No. 13 of 1982.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

The Honourable Dr. Justice T. Kochu Thomman

Tuesday the 4th January 1983/14th Pousha 1904

ELECTION PETITION NO. 13/82

Petitioner R. M. Parameswaran,
Mulamana House,
Anakudi,
Vamanapuram.

Advocates M/s. C. Sankaran Nair and
T. Ravikumar

3. 1

Respondent.—

Koliakode N. Krishnan Nair,
Vilakkathakonam,
P. O. Koliakode,
Via Vanjaramood,
Trivandrum District

by Advocates M/s. S. Narayanan Potti
S. Sankarasubban and
B. V. Deepak.

This election petition having been finally heard on 17-12-1982 and having stood over to this day for consideration this court delivered the following:

JUDGMENT

The petitioner prays for a declaration that the election of the respondent to the Kerala Legislative Assembly from No. 130 Vamanapuram Constituency was void and that the petitioner has been duly elected. In the election held on 19-5-1982, the result of which was declared on the following day, the respondent who was a candidate of the Communist Party of India (Marxist), a constituent of the Left Democratic Front (the "L.D F."), and the petitioner representing the National Revolutionary Socialist Party, a constituent of the United Democratic Front (the "U.D.F."), were the only contesting candidates. The respondent secured 36,303 votes while the petitioner secured only 34,349 votes. The respondent thus received 1,954 votes more than the petitioner.

2. The principal allegations of the petitioner are; On 18-5-1982 at about 5.30 p. m. the respondent's workers wearing badges of the Marxist Party went in a procession in Bharathanoor in Pangode Panchayat shouting derogatory slogans against the petitioner. The procession consisting of about 100 persons carrying lethal weapons proceeded to Chollappacha Harijan colony at Bharathannoor and assaulted petitioner's syampathisers and supporters who resided there. Ramankutty, Ananthavally, Lakshmi and Ambika were some of the victims. They were admitted to the Medical College Hospital Trivandrum. Crime No 163/82 was registered at the Vanjarammood police station, Sridharan, Viswambaram, Sarangadharan, Sivadasan, Kuttappan and Ayroor Sasi were the accused persons. They were workers or sympathisers of the Marxist Party. These incidents occurred about 14 hours before the election and within 400 yards of the polling booths Consequently a number of electors were too frightened to exercise their franchise. The respondent who was present in the area was well aware of the happenings. Polling was low in 18 booths. Armed man went about creating violent situations. On the following day at about 3 p. m. 100 persons went about shouting slogans in favour of the respondent at Poovanathummood in Nellanad Panchayat. They assaulted the sympathisers of the petitioner within a distance of 100 feet from polling station Nos. 120 and 121. Vikraman, Vijayan, Rajan, Jabbar and Sugathan were some of the members of this unlawful

assembly. Crime Nos. 160/82 and 161/82 were registered by the Venjarammood Police. Some of the victims sustained stab injuries and they were hospitalised. The crime was commited with the knowledge and consent of the respondent who was present at the scene. On account of the tense situation caused by the incident polling was stopped at 3.30 p. m. On the same afternoon, ie., 19-5-1982, a group of people wearing badges of the Marxist Party shouted slogans near polling stations Nos. 76, 77, 78 and 80 in Nandmiode Panchayat in Vamanapuram constituency. At least 5000 people refrained from voting on account of these incidents. These incidents are specifically alleged in the election petition (as amended by order in C.M.P. No. 28560 of 1982) as corrupt practices within the meaning of section 123 (2) of the Representation of the People Act, 1951 (the "ACT"). Offence under Section 126 of the Act were committed by carrying on intensive compaign on behalf of the respondent on the date of the election as well as on the previous day. Corrupt practice within the meaning of Section 123 (4) was committed by the respondent, his agents and workers by the publication of what is called an open letter dated 2-5-1982 (produced with the petition as Annexure I and marked as Ext. PI) containing "scurrilous and vituperative allegations, portraying the petitioner as a person at the lowest level of human existence". Copies of Ext. PI printed in yellow paper were distributed from a taxi car within close proximity of the polling stations on the evening of 18-5-1982 and the following day. One of the persons in the car was the respondent himself. Such publication of false statements in relation to the personal character and conduct of the petitioner was calculated to prejudice the prospects of the petitioner's election. As a result of such publication considerable prejudice was caused to the petitioner in the election. A number of persons voted twice over or in the names of non-existent persons As a result of such bogus voting and the terror which prevailed in the area causing premature closure of polling at 3.30 p.m. at polling stations Nos. 120 and 121, the result of the election was materially affected by improper reception and rejection of votes. A number of postal votes were lost. These corrupt practices and electoral offences have materially affected the rusult of the election of the respondent. The petitioner, therefore, contends the election of the respondent is void on the grounds specified under Section 100 (1) (b), (d) (ii), (iii), and (iv) read with Section 123 (2) and (4). The petitioner has accordingly sought the declarations referred to above.

3. These allegations are specifically denied by the respondent in his written statement dated 6-8-1982. He says that no corrupt practice was committed by him or by his election agent or any other agent or by any other person with the consent of himself or his election agent. He has denied any responsibility whatever on the part of himself or his agents or other workers in respect of the alleged incidents on 18-5-1982 and the following day. However, on subsequent enquiries he come to understand that there was a quarrel between two rival groups of people resulting in certain incidents on the basis of which Crime Nos. 160 of 1982 and 161 of 1982 were registered at the Venjarammood Police Station. He denies that the polling was stopped at 3.30 p.m. None of the alleged incidents at Bharathannur

or Poovanathummood or Nandhiode had any bearing on the polling or the result of the election. There is no substance in the allegation that 5000 people refrained from voting. The allegation that Section 126 was violated is denied The respondent has denied any knowledge of or responsibility for the printing, publication or distribution of Ext. P1. There was no double voting or bogus voting It is not admitted that any postal vote had been lost. The respondent has denied all the allegations of corrupt practices and other irregularities or violation of the law

4. On the basis of the above averments the following issued were settled in the presence of counsel on both sides and after discussing the same with them :

1. Is the election of the respondent vitiated by any of the corrupt practices committed by the respondent or his election agent or other agents with his consent as alleged in the election petitions ?
2. Is the election of the respondent vitiated by an offence under Sections 126, 127A (1), 130 and 131 of the Representation of the people Act as alleged ?
3. Has the election of the respondent been materially affected by improper reception of votes or improper rejection of votes ?
4. Has the election of the respondent been materially affected by reason of prevention of voters from voting ?
5. Is the petitioner entitled to get a declaration that the election of the respondent is void and/or a declaration that the petitioner has been duly elected ?
6. What is the order as to costs ?

5. *Issue No.* 1—It is alleged that on the evening of 18-5-1982 at about 5.30 p.m. the respondent's workers, over a hundred in number, wearing badges of the Marxist Party and armed with lethal weapons, went in procession in Bharathannur in Pamgode Panchayat and shouted derogatory slogans against the petitioner. They proceeded to Chellappancha Harijan Colony and assaulted a number of persons including Ramankutty, Ansuiavally, Lakshmi and Ambika, who were believed to be sympathisers of the petitioner. Crime No. 163 of 1982 was registered at the Venjarammood police station in respect of this incident. Sreedharan, Viswambharan, Saragadharan Sivadasan, Kuttappan, and Ayroor Sasi were the accused persons. They were sympathisers of the Marxist Party. The respodent was present in the area and was well aware of the incident. It is however not specifically pleaded that the accused persons were the agents of the respondent or that they acted with his consent. The petitioner has not pleaded the essential ingredients of Section 100 (1) (b) and (d) (ii) read with Section 123 (2) of the Act.

6. The evidence on the point consists of the oral testimony of the petitioner (P. W. 1) as well as that of PWs. 7, 20, 21 and 22. P. W. 1 does not say that he has any personal knowledge of the incident. His information is apparently based on what he heard from others and is therefore

hardly of any valne. He refers to Crime No. 166 of 1982 which does not seem to agree with his plea. What is stated in the petition is that Crime No. 163 of 1982 was registesed by the Venjarammood police in respect of the incident which occurred at Bharathannoor. In the absence of any decument such as the first information statement or report, or the evidence of any police officer connected with that station, there is little reliable information on the registration of the alleged crime. The petitioner has chosen to rely solely upon the testimony of these who have allegedly sustained injnries in that incident. He has not produced the wound certificates or any other documents to corroborate their evidence.

7.. Lakshmi (P. W. 7.) claims to be one ef the victims. She was taking Ramankutty (P. W.21) to the hospital, Ramankutty had been injured in an earlier incident on the same afternoon as a result of a quarrel with certain snpporters of the respondent over the pasting of posters. She says that he was felled in the earlier incident by a stone thrown at him. While she and some others were taking him to the hospital, the opposing group, about 50 in number armed with wepons like spring, digger and sticks, approached them and asked her and her friends to leave Ramankutty behind. When she refused so do that they beat her on the back. She was injnred. This was at about 5.30. p.m. Sreedharan, Asokan, Sarangan, Knttappan, Sivadasan,, Rajappan Pillai, Vasanthan, Kuttan, Surendran and Sura were some of the assailants. The injured were Ramankutty, Kochucherukkan, Vasudevan, Raveendran, Anandavally, Ambika and others, apart from herself. The injnred persons, including the witness, were taken to the Medical College Hospital, Trivandrum. On the following day, that is, on 19-5-1982, they were admitted at Palode hospital. The witness remained in the hospital for 11 days. This incident had frightened the voters in the Chellappacha Harijan Celony as a result of which many of them did not vote. Stab injnries were sustained by Ramankutty on his back and Kochucherukkan on his shoulders and hands. Counter-cases were registered on the basis of these incidents and both the cases were compromised. In ene of these cases Ramankutty (P.W.21), Prasanna and Vasavan had been acensed of inflicting stab wounds on Sura and Babu. The witness had been given a wound certificate by the docter who treated her in the hospital and it was preduced in the criminal ceurt. All the other injured persons had also been given would certificates. Ramankutty, she says, is a Gengress (I) worker. He werked hard for the petitiener. She also worked for the petitioner along with Ramankutty. So did Kochnchernkkan (P.W. 22). All those persons in her group who were injnred along with her in that incident were workers of the petitioner. There was record of her stay in the hospital. Nevertheless none of the records, including the wonnd certificates, has been produced in evidence. What is important to note is that this witness admits that two counter-cases invelving the same rival factions of the partisans arose as a result of a quarrel which occured on the 18th about pester pasting. Persons in both the gronps were incured and were admitted to the hospital. Persons of her own camp are active supporters of the petitioner.

8. The respondent admits in his written statement that, on subsequent enquiries, he came to understand that there was a quarrel among certain persons in the colony. He says that he was not present at the colony on the date of the incidents. Neither he nor his agents had any connection with the incidents. None of the persons involved in them acted with his knowledge or consent. He has categorically reiterated this in his evidence as R.W.1.

9. Ambika (P.W.20) claims to be one of the persons attacked while carrying Ramankutty to the hospital. She was hit on the back of her neck by a stone thrown at her. She became unconscious and fell down. Like Lakshmi she too was in the Palode hospital for 11 days. The police took her statement at the hospital. Her injury certificate, she says, must be with the doctor.

10. Ramankutty (P.W. 21) says that he had an arguement with certain persons working for the respondent on 15-5-1982 because he refused to allow them to paste posters on his house. On the 18th at about 5.30 p.m. they came back to his house. They were over 25 persons (This falls short of Lakshmi's evidence that they were 50 in number). They hold both his hands and stabbed him on the back with a knife. He was hit on the forehead with a stone. He fell down in the paddy field and was unconscious. (This account of the attack does not agree with what Lakshmi has stated). He was carried by his people to the Medical College Hospital, Trivandrum, and thereafter to the Palode hospital where he stayed for 14 days. In his cross-examination he admits that there was an earlier incident at 4 O' Clock as posters pasted on a panchayat well had been torn off. This witness as well as Kochucherukkan (P.W.22) were injured in that incident. The second incident occurred while he was being taken to the hospital as a result of the injuries sustained by him in the first incident. He says that crimes were registered in regard to both the incidents and they were later compromised. He further says that Kochucherukkan had given a statement regarding this.

11. Kochucherukkan (P. W. 22) says that he was stabbed on the back by Sura. Surendran, Sasi and Rajappan Pillai at 5.30 p.m. on the 18th while passing through the paddy field. He however says that he did not given any statement to the police regarding any incident arising from the tearing off of the posters posted on the Panchayat well. On this he contradicts P.W. 21. At the hospital the police took from him a statement regarding the attack on him in the paddy field. The doctor did not issue to him any certificate. There was a case in the Magistrate's Court but he was not examined. That case was compromised. He stayed in the hospital for 14 days at his expense. He has no record of his stay in the hospital. He is not aware of the conter-case concerning the attack on Sura by Ramankutty, Prasannan, Vasudevan and others. He did not even ask Ramankutty about that case. The evidence of this witness does not agree with what is stated by Lakshmi and Ramankutty

on material particulars while Lakshmi would say that a wonnd certificate was issued te herself and all her companions, this witness denies it. While both Lakshmi and Ramankntty speak of the registratien of twe crimes, in one of which the supporters of the petitiener fignres as the assailants and in regard te which P. W. 22 had given a statement to the police abont the tearing off of posters pasted on the panchayat well, this witness denies any knowledge of that incident. He even denies the existence of such a well. His statement that he stayed in the government hospital for 14 days *at his own expense* dees not appear to be trne.

12. What emerges from the evidence of these witnesses, despite the contradictions, seems to be that certain clashes occurred between two rival groups of people over the pasting of electien posters. The witnesses were seme of the persons injured and they were treated at the hospital. The crimes registered by the police were compromised. It is however not clear who were the aggressors in the incidents and what kind of injuries the witnesses sustained. There is no independent evidence to cerroborate what is stated by these witnesses. The question is can these incidents be described as corrupt practices within the meaning of Section 123 (2) read with Section 100 (1) (b) er 100 (1) (d) (ii). The essential links to connect the respondent with these incident to bring him within t e mischief ef these provisions are missing. It has not been established that the respondent himself or his election agent was directly involved in the incidents. There is no case that the respondent or his election agent was one of the assailants. It is net alleged that the assailants acted with the consent of the respondent or that they were his agents. Not a single witness has deposed to the respondent being present at the place of the incidents. The vague allegatien in the petition en that point is not spoken to by Lakshmi, Ambika, Ramankutty or Kochucherukkan. There is no evidence whatever to establish that the respondent or his election agent or any other agent ef his was in any manner rrsponsible for the incidents or that those who participated in them did so with the knowledge or consent of the respendent or his selcetien agent. The petitioner has failed to prove that the clashes said to have eccurre l on the afternoon of the 18th happened in the manner alleged by him.

13. Two incidents are alleged to have occurred en 19-5-1982 involving corrnpt practices within the meaning of Section 123 (2). These are stated to have occurred near polling stations 120 and 121 at Poevanathummood in Nellaned Panchayat and near polling station Nes. 76, 77, 78 and 80 in Nandhiode Panchayat. The incident at Poovanathummood, according to the petitioner, occurred at about 3 p. m. when a crowd of about 100 persons shouted slegans in favour of the respondent and assanlted certain persons believed to be sympathisers of the petitioner. Vikraman, Vijayan, Rajan, Jabbar and Sugathan were the alleged assailants. Crime Nos. 160 and 161 of 1982 were registered by the Venjarammood Pelice in respect of this incident. The victims of the assanlt, were hespitalised. The respondent was present at the scene and it was with his knowledge

and consent that the crime was prepetrated. As a result of this incident polling was stopped at about 3.30 p.m. The petitioner sent a telegram to the Returning Officer informing him of the interruption of the polling. The incident was reported by the Press and the All India Radio on 20-5-1982.

14. As regards the newspaper reports or the announcements over the All India Radio, there is no evidence whatsoever. The certified copy of the telegram stated to have been sent by the petitioner to the Returning Officer has not been produced. The Officer was not summoned to produce the original. He was not even cited as a witness. Although it is alleged that Crime Nos. 160 and 161 of 1982 were registered at the Venjaramood Police Station, no Police Officer was summoned to produce any document in relation to the crimes. Not a single document has been produced by the petitioner to corroostate the evidence of his witnesses as to the incident. The petitioner himself has no personal knowledge of it and his deposition as P.W. 1 on the point is purely based on what he heard from others. The petitioner says that he had complained to the presiding officer about the incident and reques ed him to inform the higher authorities that the polling did not continue after 3.30 p.m. Yet the presiding officer was not even cited as a witness. None of the polling officers has been examined by the petitioner. He has relied entirely upon the oral testimony of his friends and supporters to speak to the incident. P.Ws. 6, 8, 9, 10, 11, 13 and 28 have testified on behalf of the petitioner.

15. Chellappan Nadar is P.W 6. His name is mentioned in the witness list as Chellappan Nair. The petitioner's counsel tells me that it is a mistake. I will take it to be so. P.W.6 voted at the Polling Station at Poovanathummood. At about 2.30 p.m. the Marxist workers created a disturbance near the Polling Station. They threw stones at people and stabbed and beat them. The respondent was present at the scene. There were two policemen in the polling station. They were sitting on stools and watching the incident. They did nothing to preserve order, even when 2 or 3 persons sustained stab injuries and were taken to the hospital. Although the witness went away from the Polling Station, he could watch the incident from his house which was very close. Though not a supporter, he earnestly desired the success of the petitioner. He did not speak of the incident to anybody. Not even to the petitioner did he mention it. He says in the box that to this day he did not speak of it to anyone. I wounder how the petitioner or anyone else came to know that this witness had seen the incident and was, therefore, qualified to speak to it. Strangely enough this wintess was cited to speak to the meeting and procession on 19-5-1982 and not to the disturbance at polling stations 120 and 121. I think the evidence of this witness is totally undependable.

16. Sreedhara Kurup (P.W.8) voted at Alunthara booth. After voting he was on his way to his brother-in-law's house. As he reached Poovanathummood, polling was in progress. This was at about 2 or 2.30 p.m.

He stood outside as his brother-in-law went into vote. At that time about 20 people came with red flage. He heard people shouting. As he went in, he saw certain persons pelting stones at the people near the polling station and attacking them with cycle chains and stabbing them with pen knives. He ran away. He does not know the names of the people who created the disturbance. But 3 or 4 persons were injured. He does not know their names either. There were two policemen at the polling station. Seeing the incident they withdrew themselves into the polling station. They did not come out until the witness left. The witness is a supporter of the N.D.P. which is one of the constituents of the U.D.F. He was well aware that petitioner was sponsored by the U.D.F. and that it was his responsibility to vote for him. He does not speak of the presence of the respondent. He does not know the name of anyone of the assailants or the victims. Strangely enough this witness was cited to speak to the meeting and procession on 19-5-1982 and not to the disturbance at polling stations 120 and 121. He is not a disinterested person. His presence at the scene was purely by chance. His evidence is too artificial to be credible.

17. Appukuttan Nair (P. W. 9) was a voter at the polling station at Poovanathummood. He also speaks of the disturbance at about 2.30 p.m. on the 19th. Someone attacked him with a sword-like weapon and he sustained injury on the left hand below the thumb. He was treated in Menon's private hospital. He complained to the police also. His statement was taken by the police on the next day. The polling stopped as a result of the terror caused by the incident. The Marxists were responsible for what happened. The witness is a supporter of the Congress (I). He has not produced any evidence to show that he was treated at the hospital. No evidence has been produced to show that his statement was taken by the police. He says that the presiding officers and the polling officers were present at the polling stations. But none of them did anything to protect the polling during the incident. The witness did not speak of the incident to anybody. I wonder how then the petitioner came to know of this person as a qualified witness to speak of this incident. His evidence does not inspire confidence. It is, however, important to note that this witness also does not speak of the presence of the respondent.

18. Raghavan Nadar (P.W.10) speaks of the incident at Poovanathummood near polling stations 120 and 121 although he was not cited for this purpose. He was expected to speak only of the procession on the 19th. According to him the incident took place at 3 p. m. He saw persons injured with stab wounds being taken away from the premises. Persons wearing red badges with the design of a sickle were the assailants. The disturbance was on the road and outside the premises of the polling stations Unlike the other witnesses, he categorically says that the disturbance was outside the school compound. The two policemen on duty were sitting inside the polling station. They did not come out. He also does not know whether any person went to vote after he left the premises. He is not aware whether there was any hindrance to voting after he left the place. He did not report

the incident to anybody. Little reliance can be placed upon the testimony of such a witness. This witness also does not speak of the presence of the respondent.

19. Mohamed Haneefa (P. W. 11) is a Congress (I) worker. He did not vote because of the disturbance caused by persons wearing red badges with the design of a sickle and stars. He does not know who beat or stabbed who. He is aware that there was a case. But he does not know who are the accused and the victims. His evidence does not throw any light on the question. Significantly this witness also does not speak of the presence of the respondent.

20. Sadanandan (P. W. 13) went to vote, but did not do so and took shelter in a convent as he was warned of the incident by some women. He did not see the incident and his evidence has no value.

21. Soman (P. W. 28) is the Panchayat Vice President and also a contractor. He is a voter at the polling station at Poovanathummood. His name had been originally included as one of the polling agents of the petitioner and as such he is a partisan and his testimony has to be viewed with caution. He claims to have seen the respondent on the road from a tea shop near the polling station. About 50 persons wearing badges went into the polling station. One person with a stab injury was brought out. People ran hither and thither. Two policemen were on duty at the polling station. The witness was about 200 feet away from it. When confronted with the first information report in Crime No. 161 of 1982 of the Venjarammood Police Station, the witness admitted that he was an accused in the counter-case relating to the incident. He admits that he obtained bail from the Magistrate's Court. He further admits that he is a member of the Congress (I) and was, Therefore, conscious of his responsibility to support the petitioner who was sponsored by the U.D.F. of which his party was a constituent. He says that police took his statement at about 5 O' Clock on the same evening while he was in the tea shop. The Sub Inspector of Police was also present. Later he went to the polling station. The presiding officer was there. So were 3 or 4 police officers along with the police constables. He admits that he could not see the polling station from the tea shop as it was hidden behind a hill and the view was, therefore, obstructed. Admittedly the witness did not see the incident. I am not impressed by the evidence of this partisan witness.

22. It is strange that the petitioner made no attempt to examine any independent person to speak to the incident. The presiding officers of the two polling stations and the other polling officers as well as the two police constables who were on duty could have spoken to the incident, and, being independent persons, their evidence would have been of great value. The petitioner also made no attempt to summon the competent officer to produce the documents relating to the two crimes registered by the police. On the other hand, he was content to rely upon his sympathisers and supporters. Some of the witnesses had not spoken of the incident to anybody. One wonders how the petitioner ever came to hear of them. PW. 8 was

at the place of the incident purely by chance. With the exception of P.W. 6, none speaks of the presence of the respondent in the polling station, although P.W. 28 speaks of his presence on the road near the tea shop. The evidence of these witnesses does not inspire confidence.

23. The respondent has of course admitted that his subsequent enquiries revealed that a quarrel occurred among a few persons near polling stations 120 and 121 and they exchanged blows. Crime Nos. 160 of 1982 and 161 of 1982 were registered in respect of that incident. But he has denied any responsibility for the incident on the part of himself or his agents or workers. In his evidence as RW. 1 he reiterates his averment. He says that he did not know of the incident until the night of the 19th and when he made enquiries on 20th he understood that none of his workers was involved in it. He also came to know that there was no obstruction to polling as a result of the incident Policemen were on duty, and, notwithstanding the quarrel which occurred among some people, there was no serious disturbance and the polling progressed uninterrupted.

24. As regards the alleged incident at Nandhiode near polling stations 76, 77, 78 and 80, there is no evidence whatsoever. The only witness examined to speak to this incident was Manoharan Nair (P. W. 23). He speaks of matters concerning the Pacha L.P.S which, as seen from Ext. R5 series, are polling station Nos. 71 to 73. His evidence, therefore, has no relevance whatever to polling station Nos. 76, 77, 78 and 80 in Nandhiode. The respondent has emphatically denied the allegations concerning the incident in Nandhiode. He says that no such incident occurred in that area. The petitioner has failed to prove the allegations regarding that incident.

25. The allegations are that, as a result of the undue influence brought to bear upon the electorate through terror and intimidation caused by the respondent's agents and supporters, about 5000 people refrained from voting, as a result of which corrupt practices within the meaning of Section 123(2) were committed by the respondent, his agents and others who acted at his instance and with his knowledge. The evidence on record does not support any of these allegations. As I have stated, the petitioner has failed to place before the Court the best evidence which he could have obtained. Neither the officers nor other independent persons of the locality have been examined. No attempt has been made to produce the contemporaneous documentary evidence regarding the crimes or the telegram said to have been sent by the petitioner to the Returning Officer. The evidence of his partisan witnesses is unreliable for the various reasons which I have already mentioned. Apart from all these infirmities, the evidence on record clearly shows that the percentage of polling at the stations in question was not low and that the petitioner obtained more votes then the respondent. At polling station Nos. 42 to 45 at Bharathannoor, where the members of the Chellappacha colony voted, the polling was not low. This is clear from Ext. R2 series read with Ext R1. Ext. R1 shows that while the respondent obtained 1224 votes at polling stations 42 to 45, the petitioner obtained 1255 votes at those stations. Ext. R2 series indicate that at polling stations

42, 43, 44 and 45 the percentage of voting respectively was 64. 90, 66. 15, 63. 15, and 70. 42. In Poovanathummood polling station No. 120 the respondent received 157 votes while the petitioner received 247 votes. The percentage of voting was 67.95. At polling station No. 121 the respondent received 200 votes and the petitioner 247 votes. The percentage was 74.84 [See Ext. R1 read with Ext. R3 and R3(a)]. In the circumstances, I am not satisfied that the alleged corrupt practice within the meaning of Section 123 (2), has had any bearing on the voting which took place in the respective polling stations.

26. Saradanandan (P.W. 18) was cited to speak to annexure I (Ext. P1) and its effect on the voters. However, he speaks of a procession with lighted torches by persons wearing badbes of the Marxist Party on the 18th night. He does not say a word about Annexure I (Ext. P1). There is no reference in the election petition to any procession with torches. His evidence does not, therefore, relate to any specific plea. Nandagopan (P. W. 19) was cited to speak to the violence at polling stations 77 to 80 in Nandhiode on 19-5-1982. However, he speaks to a procession in Vamanapuram Panrhayat and not at Nandhiode. His evidence has, therefore, no value to support the allegations concerning any incident at Nandhiode. Nor does his evidence concerning a procession has any relevance to the allegations in the petition. R. W. 1 was totally denied the allegations concerning procession.

27. The petitioner has alleged corrupt practice within the meaning of section 123 (4). Although paragraph 8 of the election petition begings with the statement that it was committed by "the respondent, his agents and workers" the rest of the allegations are solely converned with what is said to have been done by the respondent personally. It is alleged that the respondent published and distributed all over the constitucney a pamphlet (produced as Annexure-I and marked as Ext. P1) containing "scurrilous and vituperative allegations, portraying the petitioner as a person at the lowest level of human existence". It is stated that the pamphlets were distributed in close proximity of the various polling stations on the evening of 18-5-1982 and on the following day. The respondent himself is alleged to have gone round the constituency in a taxi car distributing these pamphlets. As a result of the false imputations contained in Ext. P1 against the personal character and conduct of the petitioner, the prospects of the petitioner election had been considerably prejudiced.

28. A perusal of Ext. P1 leaves no doubt that the statements are absolutely damaging to the petitioner. The question is whether there is any evidence to asceribe the responsibility for the printing, publication and distribution of Ext. P1 to the respondent or his agents, or any other person who acted with his consent. Apart from the fact that the allegations contained in the election petition relate solely to the activities of the respondent, there is no evidence whatever to suggest that any agent or other persons who acted with the consent of the respondent caused the printing, publication or distribution of Ext. P1. The witnesses who have spoken to this question have confined themselves to the activitirs of the respondent.

29. Ext. P1 is styled as an open letter writen by O. S. Velayudhan, General Secretary, Premier Cable Company Workers Union, Ankamally, to the respondent Koliakode N. Krishnan Nair. At the bottom of Ext. P1, the published is mentioned as Koliakode N. Krishnan Nair and the printer as Chintha Printing and Publishing Company (P) Ltd., ("Chintha"). Chintha is admittedly an organ of the Communist Party of India (Marxist). O. S. Velayudhan was examined as P. W. 25. He denies having written Ext. P1. The petitioner took no steps to summon Chintha to produce the manuscript of Ext. P1 or the declaration filed with them under section 127A (2) (a); nor did he take steps to summon the District Magistrate, Ernakulam, to produce the copies of the declaration and the document filed with him by the printer under section 127 (2) (b). If Chintha did publish Ext. P1, as alleged, there should have been a declaration made to them and copies lodged by them with the District Magistrate as stipulated under the above provisions. No attempt was made by the petitioner to establish this very important fact. Nor did he make any attempt to summon Chintha to produce their accounts. This petitioner could ofcourse have had recourse to a civil or criminal action against Chintha in respect of the highly defamatory statements in Ext. P1 if he bona fide entertained the belief that Chintha was responsible for the printing of that pamphlet. In the election petition there is no statement as to the exact places where Ext. P1 pamphlets were distributed or the people who received those pamphlets. He relied upon his witnesses to speak to these material particulars without specifically mentioning them in the petition. The petitioner says as P.W. 1 that he heard of Ext. P1 for the first time on the 18th evening and saw it on the 19th evening. The allegation is that the respondent himself personally went round all over the vast constituency and distributed Ext. P1. If that were true it would be most unlikely that the petitioner would have failed to hear of it or receive a copy of it much earlier than the evening of the 18th or the 19th. The witnesses speak of distribution of these pamphlets at various places. The petitioner had his election committees all over the constituency and it is most unlikely that they would have failed to report to him immediately about as scurrilous and vituperative a pamphlet as Ext. P1 if they had in fact seen it. It is therefore quite possible that Ext. P1 was not available at any rate until the 18th evening. The case of the respondent is that it never existed until after the election.

30. The respondent says that on hearing of Ext. P1 from the averments in the election petition he want to Chintha and enquired whether they had printed Ext. P1. They told him that they had not published any such pamphlet and that their "Plamag Rotary Press" was not capable of printing on a paper of the size and colour of Ext. P1 R. W. 1 says that he had himself not seen Ext. P1 until he came to this Court. His only information about Ext. P1 was what he derived from the election petition and its Annexure I. To his information no such pamphlet was distributes at all anywhere in the constituency. The suggestion of the respondent is that Ext. P1 is a totally fictitious fabrication of the petitioner designed as a

weapon to fight the election case after hearing of the result of the election. Whatever that be, the question for consideration is whether or not the responsibility for the printing or publication of distribution of Ext. P1 can be ascribed to the respondent or his election agent or any other agent or to any other persons who acted with the consent of the respondent or his election agent. The evidence on the point is confined to the testimony of P.Ws. 1, 2, 3, 4, 5, 12, 14, 15, 16, 17, 19, 26, 28 and 29.

31. P.W. 1 is the petitioner. His evidence is purely hearsay as regards the printing or publication or distribution of Ext. P1. He saw it for the first time only on the 19th. He did not see any one distributing it. M. Kunjukrishna Pillai (P.W. 2) is an M.L.A. He was elected as a Member of the Kerala Legislative Assembly both in 1965 and in 1970. He was the Chief election agent of the petitioner. He claims to have seen the respondent distributing pamphlets at 6 p. m. on the 18th at Mithrimmala Madankav junction to a group of about 70 persons. He says that there are a number of shops doing business in the area. The witness is a Congress (I) worker. As an active politician and the chief election agent of the petitioner he is very much a partisan. Strangely enough, notwithstanding his experience in electioneering, he never complained about Ext. P1 to anybody. It was not reported to the petitioner or to the presiding officer, or any other authority. In the circumstances the evidence of this witness does not inspite confidence.

A. Abbas (P. W. 3) speaks of distribution of Ext. P1 at Kallara Junction on the 18th. He is a checking inspector of the Kerala State Road Transport Corporation. He is a member of the Employees Union sympathetic to the Marxist party. However his sympathy as a witness appears to be with the petitioner. On reading Ext. P1 he formed a poor opinion of the petitioner. Yet he did not mention this to the petitioner to anybody else. He says that he participated in certain discussions about Ext. P1. This appears to be a contradiction. He does not remember the name of any person who participated in such discussions. It would not be safe, in any view, to rely upon the evidence of this witness. K. Kuttan Nair (P.W.4) is the manager of a school. He speaks of distribution of Ext. P1 by the respondent on the 18th at about 5.30 p. m. at Muthuvila junction. He does not remember who the driver of the car was. He says he was standing far away. The witness is a Congress (I) sympathiser. He says that on the 19th when he met the petitioner he told him of Ext. P1 and gave him a copy. He had good opinion of the petitioner but he changed his views after seeing Ext. P1. He admits that his sympathies were for the petitioner in the election. He gave evidence in C. C. 61 of 1982 against the accused who were marxists. The evidence of this witness who is a partisan inspires little confidence. N. Rajendran Unnithan ((P.W.5) is a village assistant. He was engaged in making arrangements for the polling stations under the directions of the Tahsildar. At Thengumkode U. P. School, he saw the respondent distributing Ext. P1 at about 4 p. m. and explaining its contents to the listeners who were about

30 in number. He says that Ext. P1 drastically affected the result of the election. He does not remember the number of the car in which the respondent travelled. Nor does he remember the name of the driver. He knew that distribution of Ext. P1 was a serious offence. But he did not mention this to the Tahsildar under whom he worked or to anyone else. After reading Ext. P1 he threw it away. Yet he remembers its contents even now, he mentioned Ext. P1 to the petitioner only in the month of June. This however is not corroborated by the petitioner himself for he does not speak of any such conversation. In the absence of better evidence it would not be safe to place any reliance upon what is stated by this witness, who knowing of the character of Ext. P1 failed to report it to the Tahsildar or to any other officer. S. Prabhakara Kurup (PW 12) is the Presidiug of the Kallara Unit of the Kerala Merchants Association. He saw the distribution of Ext. P1 in frout of his shop at abour 3.15 p. m. on the 18th from a running car in which he managed to notice the respondent and Kallara Madhu. There were 4 other persons also in the car, but he did not recognise them. They dropped Ext. P1 in front of his shop. It was picked up by a boy who brought it to him. He read the copy and threw it away. He formed a very poor opinion of the petitioner. Therefore he voted for the respondent. He did not however bother to verify the contents of Ext. P1. He did not meet the petitioner afterwards and he still have a very poor opinion of him. He did not speak of Ext. P1 to anybody. Nevertheless the petitioner found his out to depose ou his behalf. He agreed to depose on behalf of the petitioner without receiving any summons. All this appears to be incredible. I place little reliance upon the evidence of this witness. S. Sreekumaran Nair (P. W. 14) is a Pre-degree student. He is not a voter. On the 19th morning he saw distribution of Ext. P1 from a black car at Benjaramood Kallara Madhu distributed copies of Ext. P1. Madhu is a Marxist and a supporter of the respoudent. He does not remember the contents of Ext. P1. He is a K. S. U. (Congress-I) werker. He supported the petitioner. He does net however speak of the presence of the respondeut in the car. As a partisan whose memory of Ext. P1 is feeble, his evidence does not carry weight. M. Rajasekharan Nair (P.W. 15) lives at Kalara where he saw distributiou of Ext. P1 on the 18th evening. Pirappaukode Murali, the chief election agent of the respondent was iu the car from which Ext. P1 copies were distributed. Ext. P1 created a very poor image of the petitioner. In the minds of there who read it. This witness does not speak of the presence of the respoudent but only of his election agent. He does not remember the number of the car. It is significant that the petitiouer has no case in the election petition that Ext. P1 was distributed by Pirappancode Murali. This witness failed to recognise the respondent, but only his election ageut in the car which he says was driven by Raveendran (P.W. 26) who claims to be driver of the car in which the respondent travelled. P.W. 15 further says that the car was travelling fast. He was staudiug by the side of the road. But the

pamphlet was picked up by his daughter who brought it to him it is surprising that the witness recognised Mani travelling in a moving car apparently at some distance from him. He is not a voter in Vamanapuram constituency. His evidence in the absence of corroboration from in independent source does not inspire confidence. Sumathy Pillai (P. W. 16) lives at Anakudy. She was standing in front of her house on the 18th when the respondent stopped his car and distributed copies of Ext. P1. Why the car was stopped for the purpose, instead of flinging out Ext. P1. while in motion; when her house is not stated to be at any junction, is not clear. Of course she speaks of 10 to 15 people in front of her house, but what made them gather there is also not clear, Her evidence appears to be artificial. She is admittedly a sympathiser of the petitioner. R. Thankappan Pillai (P. W. 17) has a tea shop at Kallara junction. On the 18th afternoon the respondent along with the ward president, Sasidhara Kurup, and Kallara Madhu came in a black car and stopped it in front of the " ". The respondent distributed copies of Ext. P1. He then read a part of it and asked Madhu to read the remaining portion saying that his culture did not permit him to read the whole of it. This witness was cited to prove violence in bootes 77 to 80 Nandhiode on 19-5-1982. He does not say a word of Nandhiode but speaks only of the distribution of Ext. P1 at Kallara. He formed a poor opinion of the petitioner after reading Ext. P1. Even now he says that he has a poor opinion of the petitioner. He did not speak of the incident to the petitioner. He went to Malabar a week ago and returned to Cochin only on the date of his deposition. When he reached the railway station here at about 5 a. m. some of his friends met him and took him to a lodge. They told him of this case and in response to their request he has come to the Court to give evidence. He had not told of Ext. P1 to any person until he mentioned it to his friends at the railway station. Why his friends waited at the railway station at so early on hour is not clear. The witness had no idea that his name was mentioned in the witness list until his friends told him of it. It is indeed strange that, although the name of this witness was mentioned in the witness list dated 17-8-1982, he had no information of the same. It is even more strange that this witness who had not spoken of what he had seen at Kallara to anyone at all had been included in the witness list. It is not known whether even about Nandhiode he had spoken to the petitioner or anybody else. He who was cited for a particular purpose did not have a word to say on it. But he speaks on a totally different matter. The evidence of this witness does not appear to be credible. P. Nandagopon (P. W. 19) is tailor. He lives at Melattummozhi. He did not see the distribution of Ext. P1 on the 18th, but got a copy of the same when it was bronght to him by one Gangadharan. His evidence, therefore, has no value on the question of distribution of Ext. P.W. N. K. Ravindran (P. W. 26) is the driver of the vehicle K. R. V. 1206 which is a tourist car owned by Gopi. He claims to have driven the respondent around all over the constituency on his election work in the month of May. He remembers that on the 18th. Ext. P1 copies were distributed. The respondent, Kallara Madhu,

Pirappancode Murali (the respondent's election agent) and others, travelled in his car. The car stopped at various places and distributed copies of Ext. Pl. Often the copies were flung out while the car was in motion. The car ran for 114 km. on the 18th and 160 km. on the 19th. On the 17th it ran for 100 km.. All on election work. The daily hire of the car was Rs. 150 in addition to petrol Strangely enough this car which was so heavily used by the respondent on hire on those days did not have a trip sheet. None of the petrol bills allegedly paid by the respondent has been produced. No account has been produced to show that the car was used by the respondent. In fact, apart from the real testimony of this witness, there is no evidence that the car used by the respondent. The respondent denies having used this car. The owner of the car Gopi has not been examined. He was not even cited to produce the documents concerning the trops said to have been made by the respondent. The testimony of this witness does not appear to be reliable. Soman (P. W. 28) speaks of the distribution of Ext. Pl. on the 18th at about 8 p. m. at Koezhailkona from a car driven by Ravindran (P. W. 26). The name of this witness, as stated above, had been originally included as a polling agent of the petitioner. He is, therefore. very much a partisan and his oral testimony; in the absence of an independent corroborating evidence, does not inspire confidence. This evidence was originally cited to speak to the participation of the respondent in a procession on 19-5-1982 and he was not cited to speak to Ext. Pl Sathyadevan (P. W. 29) is an advocate. He speaks of the distribution of Ext. Pl by the respondent and others at about 6.30 p. m. on the 18th at Bharathannur Junction from an Ambassador Car. He met the petitioner at about 8 p. m. on the following day. The petitioner then asked his whether legal action could be taken in respect of the defamatory statement contained in Ext. Pl. He asked the petitioner to enquire at the office of the District-Magistrate, Trivandrum. as to whether they had received the manuscript or a copy of Ext. Pl. The petitioner made enquiries, but did not receive any information. The witness then asked his clerk Krishnan Nair to find out through his daughter, Sathi Bhai, showns working with Chintha, whether Ext. Pl was printed by them. His clerk told him 3 or 4 days later that his daughter had found that Ext. Pl was printed by Chintha and that if the information looked out his daughter would loss her job. The witness assured the clerk that he would keep the information in Strict confidence. Accordingly he did not tell the petitioner anything about it. In cross-examination this witness admits that he gave the wrong advice to the petitioner when he asked him to make enquiries at the office of the District Magistrate, Trivandrum. The petitioner ought to have enquired, as provided under Section 127. A, at the office of the District Magistrate, Ernakulam, Ext. Pl having been allegedly printed at Ernakulam. His evidence that Sathi Bhat told her father that Ext. Pl was printed by Chintha is purely hearsay. The father himself was not examined or cited as a witness. This witness was had, according to him, given his word of

honour that he would keep the information collected through his clerk's daughter in strict confidence, casually says in Court that, as far as he is concerned, his clerk and the petitioner are of equal importance and, therefore, he had decided to disclose the information in the interest of truth. His evidence which is purely of a hearsay character was roundered by him at the risk of putting a young lady in peril of losing her job whatever to the reason which impelled this witness to commit this breach of confidence- the professional ethics of which I do not propose to ponder over—his evidence does not in any manner strengthen the petitioner's case.

32. The case of the petitioner is that Ext. P1 is so vituperative an attack on the character and conduct of the petitioner that those who read the pamphelt felt towards him a revulsion as a result of which he lose many Votes which he would have otherwise gained. This is alleged to be a corrupt practice committed by the respondent within the meaning of Section 123 (4). The evidence on the point is solely confined to the oral testimony of persons whose words, for the reasons which I have already mentioned, lack credibility in the absence of corroboration by independent evidence. In the light of the respondent's suggestion that Ext. P1 was brought into existence by the petitioner himself subsequent to the election as a weapon to challenge the result of the election, the burden upon the petitioner to prove the allegations regarding the printing, publication and distribution [of the pamphlet is so much the heavier. As stated by the Supreme Court in **Baburao Bagaji Karemore v. Govind** (A. I. R. 1974 S.C. 405, 415):

> "........................At any rate, when any impugned document is hotly contested on that ground and it is the case of the respondent that it was brought into existence subsequently, the onus on the petitioner who challenges the election on that ground is all the more heavy."

Failure on the part of the petitioner to take steps to summon the printers to produce the declaration filed with them by the publisher under Section 127A (2) (a) or the District Magistrate to produce the documents filed with him by the printers under Section 127A (2) (b) is a significant omission. The burden was entirely upon him to adduce this very important documentary evidence to corroborate the testimony of his numerous witnesses whose evidence is underpendable for the reasons which I have mentioned. The oral testimony in this case suffers from those very same infirmities pointed out by the Supreme Court in **Baburao Bagaji Karemore v. Govind** (supra) as sufficient reason to discard it. This is what the Supreme Court says:

> "In considering the evidence of these witnesses, particularly in an election matter, the interest which these witnesses have in and the support they give to, any particular political party are relevant factors to be taken into consideration for determining their bias for speaking in favour of one party or against the other. Apart from this, there are other factors such as their knowledge of the contents

of the pamphlets, whether they preserved those pamphlets, what action they took, whom they had informed if they had considered such pamphlets to be offensive, and whether they are chance witnesses or had an opportunity of knowing about the incident about which they are deposing. There may also be some witness who may claim to have supported the successful candidate, but after the election have changed their loyalty and have appeared as witnesses of the petitioners. This is also a circumstance to be taken into consideration." (para. 50).

Oral testimony has to be scrutinised with the greatest care and caution. An electoral victory cannot be nullified by a mouthful of oral evidence unsupported by contemporaneous assurance of a reliable nature from an independent source. (See A. I. R. 1976 S. C. 1886; A. I. R. 1976 S. C. 1599, 1604; A. I. R. 1975 S. C. 290; A. I. R. 1977 S. C. 587). A charge of corrupt practice is of a criminal character. The burden is upon the election petitioner to prove it beyond reasonable doubt to the satisfaction of the Court by cogent and unimpeachable evidence. (See A. I. R. 1976 S. C. 1886; A. I. R. 1981 S. C. 8; A.I.R 1975 S.C. 290; A.I.R. 1978 S.C. 1162; A.I.R. 1979 S.C. 234).

33. The alleged incidents at Bharathannoor, Poovanathummod and Nandhiode are described as corrupt practices within the meaning of sub-sections (2) and (4) of section 123. It is strange that, notwithstanding the alleged canvassing, the distribution of Ext. P1 pamphlets on the 18th and 19th and the disturbance caused at the polling stations on the 19th, no prosecution appears to have been launched in terms of Sections 126, 130 and 131. There is no evidence, apart from a vague reference to the telegram sent by the petitioner to the Returning Officer, that any complaint had been made to any authority. The petitioner did not take timely steps to obtain a certified copy of his telegram. No presiding officer or any other officer connected with the election or any police officer or doctor was examined to speak to the various matters alleged. Their evidence on the basis of documents which they could have produced would have been of much value in corroborating the oral testimony of his partisan witnesses. In the absence of any independent evidence the oral testimony lacks credibility. The petitioner has thus failed to prove the allegations concerning corrupt practices. Issue No. 1 is accordingly found against the petitioner.

34. *Issue No.* 2. For the reasons which I have stated above, there is no evidence whatever to show that Sections 126, 127A(1), 130 and 131 have been violated. As I stated earlier, the petitioner took no steps in terms of Section 127A to summon Chintha or the District Magistrate Ernakulam to produce the documents relating to Ext. P1. In the absence of any evidence to connect Ext. P1 with either Chintha or with the respondent or his election agent or any other agent or any other person acting with the consent of the respondent or his election agent in regard to either the printing or publication or distribution of Ext. P1, the respondent has no liability whatever in respect of Ext. P1. As regards Sections 126, 130 and

131, there is no evidence to connect the respondent or his agents with the holding of any public meeting or with any canvassing or disorderly conduct in violation or those provisions. Issue No 2 is accordingly found against the petitioner.

35. *Issue Nos. 3 and* 4. The petitioner has alleged that, on account of the various incidents, roughly 5,000 people did not vote or were prevented from voting. The petitioner has also alleged that there was improper reception and rejection of votes. He has produced Exts. P2 and P3 which he has himself prepared showing that bogus votes were cast by persons who had already voted or by persons who voted in the names of non-existent persons. Further more the peti ioner has stated that a number of postal votes were lost. In support of the last contention he has produced Ext. P4 which is a copy of Malayala Manorama dated 28-5-1982 showing a photograph (Ext. P4(a) of postal ballot papers of Vamanapuram constituency.

36. There is absolutely no evidence that 5000 votes were not cast on account of fear. There is no evidence at all to suggest that people were prevented from voting or failed or refused to vote because of fear. As I stated earlier, the percentage of polling at the polling stations in question was fairly high and the petitioner obtained more votes than the respondent in those stations.

37. The only evidence that has been adduced on the point of bogus voting is the oral testimony of the petitioner and Exts. P2 and P3 which are statements prepared by the petitioner himself. They do not therefore lend each other the necessary corroboration on the question of improper reception and rejection of votes. Even if bogus votes had been cast, as alleged by the petitioner, it is not possible to say from the pleadings and the evidence on record whether such bogus votes had materially affected the result of the election. Assuming that the figures supplied by the petitioner in para 9 of the election petition as well as in Exts. P2 and P3 are acceptable, even so those alleged infirmities could not have materially affected the result of the election.

38. As regards the loss or destruction of postal ballot papers, the only document produced by the petitioner to corroborate his evidence is the photograph and the news item appearing in Malayala Manorama. No other witness has spoken on this point. The editor or publisher or reporter of the paper has not been examined. Assuming that there was loss of postal ballot papers, there is no evidence as to the total number of postal ballot papers issued and the actual number of ballot papers lost. In the absence of any evidence, which the petitioner ought to have produced, as to these matters, it is not possible to say whether the loss of postal ballot papers, if any, had materially affected the result of the election. In the circumstances Issues Nos. 3 and 4 are found against the petitioner.

39. *Issue No. 5.* The petitioner is not entitled to the declarations sought. There is no evidence to show that the election of the respondent is void for any of the reasons stated by the petitioner. The petitioner has

failed to prove any of the alleged corrupt practices. None of the other allegations contained in the petition stands proved. In the circumstances the petitioner is not entitled to any relief in this proceeding.

40. *Issue No. 6.* The petitioner shall pay to the respondent a sum of Rs. 2,000 as his costs towards which the amount deposited by the petitioner in this Court shall be adjusted.

41. The election petition is dismissed with costs.

42. The Registrar shall immediately intimate the substance of this decision to the Election Commission and the Speaker of the Kerala Legislative Assembly and shall thereafter send as urgently as possible an authenticated copy of this Judgement to the Election Commission, as required under Section 103 of the Representation of the People Act, 1951.

(Sd.)

T. KOCHU THOMMEN,

Judge.

APPENDIX

Petitioner's Exhibits:

P1		Notice published by Koliakode N. Krishnan Nair titled 'Anopen letter'.
P1 (a)		English Translation of do.
P2	2-7-1982	Annexure II of the Election petition.
P3	do.	Annexure III of this Election petition.
P4	28-5-1982	Copy of 'Malayala Monorama' daily.
P4 (a)	do.	News item in do. at page 1.
P4 (b)	do.	News Photo do.
P4 (c)	do.	do. do.
P4 (d)	do.	News item in do. Page 5.
P4 (e)		Translation (English) of annexure IV.

1st Respondent's Exhibits:

R1	20-5-1982	Copy of Final Result Sheet of 130, Vamanapuram L. A. Constituency.
R2	..	Voters list of P. S. No. 42.
R2 (a)	..	do. of P. S. No. 43.
R2 (b)	..	do. of P. S. No. 44.
R2 (c)	..	do. P. S. No. 45.
R3	..	do. of P. S. No. 120.
R3 (a)	..	do. of P. S. No. 121.
R4	..	Voters list of P. S. No. 76.
R4 (a)	..	do. of P. S. No. 77.
R4 (b)	..	do. of P. S. No. 78.
R4 (c)	.	do. of P. S. No. 79.
R4 (d)	..	do. of P. S. No. 80.
R5	..	do. of P. S. No. 71.
R5 (a)	..	do. of P. S. No. 72.
R5 (b)	..	do. of P. S. N. 73.

Petitioner's Witness:

1. R. M. Parameswaran
2. M. Kunjukrishna Pillai
3. A. Abbas
4. K. Kuttan Nair
5. N. Rajendran Unnithan
6. Chellappa Nadar
7. Lekshmi
8. K. Sreedhara Kurup
9. G. Appukuttan Nair
10. Mohammed Haneefa
11. S. Prabhakara Kurup
12. Sadanandan
13. S. Sreekumaran Nair
14. M. Rajasekharan Nair
15. K. Sumathy Pillai
16. R. Thankappan Pillai
17. S. Saradanandan
18. P. Nandagopan
19. Ambika
20. Ramankutty
21. K. Koducherukkan
22. Monoharan Nair
23. M. M. Salim
24. O. S. Velayudhan
25. N. K. Ravindran
26. V. Sukumaran Pillai
27. Soman
28. V. P. Sathyadevan

Respondent's Witness:

1. Koliakode, N. Krishnan Nair

Costs to the 1st respondent Rs. 2,000.

By Order,

(Sd.)

M. L. WAHI,

Under Secretary to the Election Commissioner of India.

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 4784/EL. 3/83/Elec. *Dated, Trivandrum, 27th August* 1983.

The following order No. 76/KL/83 (148—152) Bye dated 7th August 1983 of the Election Commission of India is hereby published.

By order,
R. RAMACHANDRAN NAIR,
Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Ashok Road, New Delhi-1.

No. 76/KL/83 (148-152) Bye. *Dated the 7th August* 1983

ORDER

Whereas the Election Commission is satisfied that each of the contesting candidates specified in column 4 of the Table below at the Election to the State Legislative Assembly as specified in column (2) and held from the Constituency specified in column (3) against his name has failed to lodge any account of his election expenses, within the time and in the manner as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S. No. and Name of Constituency	Name of the contesting candidates	Reason for disqualification
(1)	(2)	(3)	(4)	(5)
1	Bye-election to Kerala Legislative Assembly held in March, 1983.	137—Nemom	Shri James Antony House No. 1302, Moly Fisheries, Valiathura, Trivandrum (Kerala)	Failure to lodge any account
2	Do.	do.	Shri N. R. Sukumaran Nair, Sreemuruka vilas, Nedumkantam, Idukki District, Kerala	do.
3	Do.	do.	Shri Nandavanam Suseelan, T. C. 14/578, Nandavanam, Palayam, Trivandrum, Kerala	do.
4	Do.	do.	Advocate A. Sambasivan, Thoppil Veedu, Pettah, Trivandrum, Kerala	do.
5	Do.	do.	Shri B. P. Sashi Bhooshanam Nair, Thavarathala Veedu, Kottukal, Payattuvila (P. O.) Balaramapuram (Kerala)	do.

By order,

(Sd.)

M. L. WAHI,

Under Secretary to the Election Commission of India.